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11 CORPORATION

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

14  
15 A.M.,

16 Plaintiff,

17 v.

18 VALVE CORPORATION and DOES 1  
through 10, inclusive,

19 Defendants.

Case No. 2:16-cv-03595-PSG-FFM

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANT VALVE  
CORPORATION'S MOTION FOR  
TRANSFER PURSUANT TO 28  
USC § 1404(a)**

Date: August 1, 2016  
Time: 1:30 p.m.  
Judge: Philip S. Guterrez  
Courtroom: 880  
Trial Date: Not Set

## I. INTRODUCTION

Plaintiff “A.M.” entered into an Independent Contractor Agreement (“Agreement”) with Defendant Valve Corporation in early 2012. The Agreement was requested, created and executed in Washington State, where Plaintiff was employed by Valve at its corporate offices. Valve’s headquarters and almost all of its employees continue to be located in Washington to this day. Plaintiff’s Agreement with Valve states that Plaintiff “consents to jurisdiction and venue in the state or federal courts sitting in King County, Washington . . . .” Notwithstanding her agreement to Washington venue, Plaintiff filed suit against Valve in Los Angeles County Superior Court. After having removed the matter to this Court on the basis of diversity jurisdiction, Valve now respectfully asks this Court to transfer the matter to the U.S. District Court in Seattle, Washington.

A valid forum selection clause shall be given “controlling weight in all but the most exceptional cases.” (*Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 134 S. Ct. 568, 582 (2013) (internal quotations omitted).) As explained in more detail below, this is not a “most exceptional case[.]” Instead the Agreement was requested by Plaintiff so she could continue providing services to Valve after she resigned as a Valve employee in Washington and relocated to California, where Valve does not have any employees or facilities.

Even if there had not been a forum selection clause, King County would be the most appropriate venue because the Agreement was requested, drafted, and signed in Washington state, and because Plaintiff’s claims are based on conduct that is alleged to have occurred entirely in Washington state. In addition, the Valve employees with whom Plaintiff interacted and who have knowledge regarding Plaintiff’s claims and/or Valve’s defenses live and work in Washington state. (*Almont Ambulatory Surgery Center, LLC v. UnitedHealth Group, Inc.*, 99 F.Supp.3d 1110, 1167 (C.D. Cal. 2015) (citations omitted).) Valve therefore respectfully asks the Court to grant its motion to transfer this action to the U.S.

District Court for the Western District of Washington in Seattle pursuant to 28 U.S.C. § 1404(a).

## II. FACTUAL AND PROCEDURAL HISTORY

Valve Corporation is in the business of creating and distributing video games. (Declaration of Dina Nelson, ¶ 2.) Valve also operates the Steam entertainment and distribution platform. (*Ibid.*) Valve is incorporated in Washington and its headquarters and operations are located in Bellevue, Washington. (*Ibid.*)

Plaintiff was employed by Valve starting in November 2008. (Nelson Decl., ¶ 3.) Valve hired the Plaintiff and sponsored her application for an H1-B visa based on her strong academic qualifications—including a Ph.D in linguistics—and based on her strengths as a linguist and translator who is fluent in English and other languages. (*Ibid.*) In her work as an employee in Valve’s Bellevue, Washington office, Plaintiff translated digital content primarily into Spanish and Italian, and also served as a liaison with members of the Steam gaming community in Spain, Italy and certain other countries. (Nelson Decl., ¶ 3; Dkt. 1-1, Exh. A to Valve’s Notice of Removal, Plaintiff’s Complaint, ¶ 5.) Plaintiff worked for Valve as a full-time employee in its Washington office from November 2008 until February 2012. (*See* Nelson Decl., ¶ 3; Dkt. 1-1, Plaintiff’s Complaint, ¶ 6.)

In 2011, Plaintiff informed Valve she wanted to relocate to Los Angeles, California to complete her gender-transition process. (Dkt. 1-1, Plaintiff’s Complaint, ¶ 6; Nelson Decl., ¶ 4.) Valve explained to Plaintiff in 2011 that it did not have any operations, facilities or employees in California, and that it was not interested in hiring her or any other employee in California or outside of its Bellevue office. (Nelson Decl., ¶ 4.) Valve did indicate, however, that it would be willing to engage Plaintiff on an independent contractor basis to allow her to continue providing services to Valve after her relocation to Los Angeles. (*Ibid.*) Plaintiff’s move to Los Angeles was solely the result of Plaintiff’s request, and this request was made solely for her own personal reasons, as Valve had no desire for Plaintiff to

1 perform her work away from its Bellevue, Washington offices. (*Id.* at ¶¶ 4-5.)  
 2 Plaintiff repeatedly expressed her appreciation for Valve’s agreement to allow her to  
 3 continue providing services to the company after her move to California. (*Id.* at ¶  
 4 5.)

5 In February 2012, Plaintiff and Valve signed an Independent Contractor  
 6 Agreement (the “Agreement”) under which Plaintiff agreed to provide certain  
 7 services to Valve from California. (Nelson Decl., ¶¶ 5-6; Ex. A to Nelson Decl.)  
 8 Before signing the Agreement, Plaintiff indicated in an e-mail message that she  
 9 intended to consult with her with her attorney and tax advisor about the terms of that  
 10 Agreement. (*Id.* at ¶ 5.) Ultimately, Plaintiff signed the Agreement without asking  
 11 for it to be revised. (*Ibid.*) After signing the Agreement and moving to Los  
 12 Angeles, Plaintiff provided services to Valve under the Agreement for  
 13 approximately four years, until Valve decided to terminate the Agreement in  
 14 January 2016. (Dkt. 1-1, Plaintiff’s Complaint, ¶¶ 7, 10; Nelson Decl., ¶ 7.)

15 The Agreement contains a forum-selection clause in Paragraph 14:  
 16 “Contractor hereby consents to jurisdiction and venue in the state or federal courts  
 17 sitting in King County, Washington, and waives any argument of forum non  
 18 conveniens in connection therewith.” (Nelson Decl. ¶ 6; Exh. A, ¶ 14.) It also  
 19 provides that the Agreement is governed by Washington law. (*Ibid.*)

20 In April of this year, Plaintiff filed a complaint against Valve in Los Angeles  
 21 County Superior Court. (Dkt. 1-1, Plaintiff’s Complaint.) Plaintiff raises a total of  
 22 eight claims, but they are all based on the parties’ relationship as described in the  
 23 Agreement. For example, Plaintiff’s misclassification, unlawful business practices,  
 24 and overtime claims are all based on the allegation that, through the Agreement,  
 25 Valve misclassified Plaintiff as an independent contractor and therefore failed to pay  
 26 her correctly. (*Id.* at ¶¶ 7, 39-40, 47, 51.) Plaintiff’s discrimination, failure to  
 27 accommodate, and hostile work environment claims are all premised on the idea that  
 28 the Agreement was not enough to fully accommodate and protect Plaintiff. (*Id.* at

¶¶ 18-20, 25-26, 28-31 ) Finally, Plaintiff’s wrongful termination and retaliation claims are premised on the allegation that Valve’s termination of the Agreement was somehow improper. (*Id.* at ¶¶ 11, 35.) The Agreement is therefore the foundational issue for all eight claims that Plaintiff brought in Los Angeles County Superior Court.

Valve timely removed the action to the Central District of California on May 24, 2016 on the basis of diversity jurisdiction. (Dkt. 1, Valve’s Notice of Removal.)

### III. LEGAL STANDARD

“For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action . . . to any district or division to which all parties have consented.” (28 U.S.C. § 1404(a).) The appropriate way to enforce a forum selection clause, like that in the Agreement, is through 28 U.S.C. § 1404(a). (*Atl. Marine*, 134 S. Ct. at 580.)

Federal courts apply federal law to determine the enforceability of a forum selection clause. (*Doe I v. AOL LCC*, 552 F.3d 1077, 1083 (9th Cir. 2009).) Forum selection clauses are “prima facie valid and should be enforced unless enforcement is shown by the resisting party to be ‘unreasonable’ under the circumstances.” (*M/S Bremen v. Zapta Off-Shore Co.*, 407 U.S. 1, 10 (1971).) “[T]he forum [selection] clause should control absent a strong showing that it should be set aside.” (*Id.* at 15.)

In addition, when the parties had agreed to valid, binding forum and choice of law clauses, plaintiff cannot plead around this agreement by filing in California, then claiming that enforcement of the Agreement violates California policy. (*See Swenson v. T-Mobile USA, Inc.*, 415 F. Supp. 2d 1101, 1104-1105 (S.D. Cal. 2006).) As the court noted in *Swenson*, “forum selection clauses would be largely meaningless as it would depend on who filed first and whether that forum’s law was more favorable to them.” (*Id.* at 1105.)

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1 When there is a dispute over whether a forum selection clause is mandatory or  
 2 permissive, the Ninth Circuit has held, and this District Court has repeated, that the  
 3 Court should consider the following factors:

- 4 (1) the location where the relevant agreements were negotiated and executed,
- 5 (2) the state that is most familiar with the governing law,
- 6 (3) the plaintiff's choice of forum,
- 7 (4) the respective parties' contacts with the forum,
- 8 (5) the contacts relating to the plaintiff's cause of action in the chosen forum,
- 9 (6) the differences in the costs of litigation in the two forums,
- 10 (7) the availability of compulsory process to compel attendance of unwilling
- 11 non-party witnesses, and
- 12 (8) the ease of access to sources of proof.

13 Additionally, the presence of a forum selection clause is a 'significant factor' in the  
 14 court's § 1404(a) analysis. (*Almont Ambulatory Surgery Center, LLC*, 99 F.Supp.3d  
 15 at 1167 (quoting *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th  
 16 Cir.2000)).) As further described below, the parties' forum selection clause, as well  
 17 as the majority of the factors provided by the Ninth Circuit, dictate that this dispute  
 18 should be heard in the District Court for the Western District of Washington in  
 19 Seattle.

## 20 IV. ANALYSIS

### 21 A. The Forum Selection Clause is Valid

22 The Supreme Court in *Bremen* recognized three conditions that would make  
 23 enforcement of a valid forum selection clause unreasonable: (1) "if the inclusion of  
 24 the clause in the agreement was the product of fraud or overreaching;" (2) "if the  
 25 party wishing to repudiate the clause would effectively be deprived of his day in  
 26 court were the clause enforced;" and (3) "if enforcement would contravene a strong  
 27 public policy of the forum in which suit is brought.'" (*Richards v. Lloyd's of*  
 28 *London*, 135 F.3d 1289, 1294 (9th Cir. 1998) (citing and quoting *Bremen*, 407 U.S.  
 at 12-13, 15, 18).) None of these conditions are present here, and Plaintiff cannot  
 make a "strong showing that [the forum selection clause] should be set aside."  
*Bremen*, 407 U.S. at 15.

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1 First, the Agreement was the product of two relatively sophisticated parties,  
 2 and Plaintiff entered into the Agreement after informing Valve that she was  
 3 consulting with an accountant and an attorney about the terms of the proposed  
 4 Agreement. (Nelson Decl., ¶¶ 3, 5.) Plaintiff has not suggested that she was the  
 5 victim of fraud or overreaching by Valve, and there is no evidence of any such  
 6 overreaching or fraud.

7 Second, there is no indication that Plaintiff would be deprived of her day in  
 8 court if this case is transferred to Washington state and to a region in which she  
 9 lived and worked for approximately four years.

10 Finally, the Agreement's forum selection clause does not contravene  
 11 California public policy. The proper inquiry for this analysis is "the reasonableness  
 12 of the forum selection clause itself, not the reasonableness of the effect of enforcing  
 13 it." (*Meyer v. Howmedica Osteonics Corp.*, No. 14CV2496 AJB NLS, 2015 WL  
 14 728631, at \*11 (S.D. Cal. Feb. 19, 2015).) A forum selection clause entered into  
 15 between two consenting parties does not violate any California public policy. (*See*  
 16 *id.* at \*12 (finding that a New Jersey forum selection clause in a contract containing  
 17 a non-compete clause did not contravene California public policy).)

18 Thus, Plaintiff cannot meet her burden to show that the forum selection clause  
 19 is unenforceable and Valve respectfully requests that the Court enforce the agreed  
 20 clause and grant this motion to transfer.

21 **B. The Agreement, and Ninth Circuit Precedent, Mandates the Transfer of**  
 22 **This Action to the U.S. District Court for the Western District of**  
 23 **Washington.**

24 Plaintiff agreed to the jurisdiction of "the state or federal courts sitting in  
 25 King County, Washington" for disputes regarding the Agreement. (Exh. A, ¶ 14.)  
 26 Plaintiff further "waives any argument of forum non conveniens in connect  
 27 therewith." (*Ibid.*) Because this action has been removed to federal court, a transfer  
 28 to the U.S. District Court for the Western District of Washington in Seattle is

1 appropriate, as it is the sole federal, trial-level court in King County. The Supreme  
 2 Court has found that when there is a valid forum selection clause, it shall be given  
 3 “controlling weight in all but the most exceptional cases.” (*Atl. Marine*, 134 S.Ct. at  
 4 582 (internal quotations omitted).) Plaintiff’s Complaint does not present any such  
 5 exceptional circumstances, thus, this clause should be enforced.

6 Even if the forum clause is interpreted as permissive instead of mandatory,  
 7 venue in Washington is appropriate according to the factors provided by the Ninth  
 8 Circuit in *Jones*, and cited affirmatively by this Court in *Ambulatory Surgery*  
 9 *Center*. (See 99 F.Supp.3d at 1167 (quoting *Jones*, 211 F.3d at 498).) Of these nine  
 10 factors, only one cuts in favor of venue in California: Plaintiff’s choice of forum.  
 11 The other eight factors all favor hearing this dispute in the Western District of  
 12 Washington:

- 13 • The parties agreed in writing that the state or federal courts in King  
 14 County, Washington, have jurisdiction over the parties, and provide a  
 15 proper venue. (Exh. A, ¶ 14.)
- 16 • The Agreement was requested by Plaintiff and executed by Plaintiff  
 17 and Valve in King County. (Nelson Decl., ¶¶ 4-5, *see also* Exh. A, p.  
 18 1.)
- 19 • The Agreement provides that Washington state law governs, and the  
 20 federal court in King County should have sufficient experience to  
 21 competently apply the laws of its host state. (See Exh. A, ¶ 14.)
- 22 • Valve is located in Washington and all of its executive and managerial  
 23 functions take place there. (Nelson Decl., ¶ 2.)
- 24 • Plaintiff also has contacts in Washington, as she used to live and work  
 25 there. (Dkt. 1-1, Plaintiff’s Complaint, ¶ 6.)
- 26 • All of the alleged wrongdoing occurred in Washington. (*Id.* at ¶¶ 7-11,  
 27 20-21, 25, 28-31, 34-35, 39-40, 51.)

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- It will be less expensive to litigate in King County compared to Los Angeles County because virtually all of the witnesses and documents are located in King County. (*See* Nelson Decl., ¶¶ 2-5.)
- The District Court for the Western District of Washington in Seattle can compel the testimony of non-party witnesses pursuant to Federal Rule of Civil Procedure No. 45.

In total, eight of the factors provided by the Ninth Circuit support the conclusion that the Western District of Washington in Seattle is the proper venue, while only one, Plaintiff's choice, points towards the Central District of California.

## V. CONCLUSION

For the foregoing reasons, Valve respectfully requests that the Court enforce the valid forum selection clause in the Agreement and transfer this action to the U.S. District Court for the Western District of Washington in Seattle.

Dated: June 2, 2016

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